

2021-03-09 SB 820 (Support).pdf

Uploaded by: Jung, Roy

Position: FAV

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

March 9, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: SB 820 – Wills, Powers of Attorney, and Advance Directives - Electronic Execution –
Support

The Office of Attorney General urges this Committee a favorable report of SB 820. Senator West's Senate Bill 820 allows the electronic execution and remote witnessing for execution of wills, powers of attorney, and advance directives in certain circumstances.

Senate Bill 820 seeks to implement COVID-19 Access to Justice Task Force's ("Task Force") recommendations.¹ The pandemic highlighted the need for "new policies [for easier] . . . virtual[] execution"² of wills, powers of attorney, and advance directives. In response, the Task Force recommended to codify "the Governor's COVID-19 Executive Orders that allow for remote witnessing and notarizing certain life documents during the state of emergency."³ And Senate Bill 820 does so.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 820.

cc: Members of the Judicial Proceedings Committee

¹ See generally MD. ATT'Y GEN. BRIAN E. FROSH'S COVID-19 ACCESS TO JUST. TASK FORCE, CONFRONTING THE COVID-19 ACCESS TO JUSTICE CRISIS (Jan. 2021), https://www.marylandattorneygeneral.gov/A2JC%20Documents1/AG_Covid_A2J_TF_Report.pdf.

² *Id.*, at 33.

³ *Id.*

West_SB820_FAV.pdf

Uploaded by: West, Christopher

Position: FAV

CHRIS WEST
Legislative District 42
Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County
Senate Delegation



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 303
Annapolis, Maryland 21401
410-841-3648 · 301-858-3648
800-492-7122 Ext. 3648
Chris.West@senate.state.md.us

District Office
1134 York Road, Suite 200
Lutherville -Timonium, MD 21093
410-823-7087

March 9, 2021

Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 820 – Wills, Powers of Attorney and Advance Directives – Electronic Executions

Dear Chairman Smith and Members of the Committee:

This is a very technical bill but a very important bill. Let me explain why.

Last winter, when the pandemic hit and the State essentially shut down, many elderly citizens and others as well realized that the time had come when they should execute their wills. The problem was that typically a will is executed in a small conference room in an attorney's office with the testator surrounded by the attorney, two witnesses, a Notary Public and frequently one or more other members of the family of the testator. With COVID running rampant, however, the prospect of a number of strangers gathering in a small room was unacceptable.

The leadership of the Estates and Trusts Section of the Maryland State Bar Association therefore met with the Governor's legal counsel, Mike Pedone, and they drafted an Executive Order under the authority of the Governor's Emergency Declaration, which the Governor promptly signed, that overrode certain provisions of existing law in order to enable wills and other key legal instruments to be signed remotely.

Pursuant to the Executive Order, many Maryland citizens have been signing their wills remotely throughout the pandemic. The time will come, however, when the pandemic ends and the Governor's Emergency Declaration is rescinded. At that moment, all Executive Orders issued by the Governor under the authority of the Emergency Declaration will literally evanesce. As soon as the Executive Order dealing with the remote executions of wills ceases to exist, since the Executive Order overrode certain provisions of existing law, all of the legal instruments executed remotely during the pandemic in accordance with the Executive Order will be subject to attack on grounds that they were invalidly executed.

That is why this bill is so important. It parallels the Governor's Executive Order authorizing wills to be executed remotely and thus extends the right to execute wills remotely into the future. But the bill explicitly is made retroactive to March 10, 2020 and thus will validate all wills executed during the pandemic pursuant to the terms of the Executive Order.

My witnesses will discuss the details of the bill, but let me just provide a brief overview. Under Senate Bill 820, wills, powers of attorney and advance directives may be executed electronically and witnessed remotely, unlike under current law. At the time that the instrument is signed, the testator and all witnesses must be in the physical presence or electronic presence (a defined term) of one another and a supervising attorney, who may be one of the witnesses. The testator must be a resident of, or physically located in, Maryland. Each witness must be a resident of, or physically located in, the United States. In addition, the supervising attorney must create a certified will or power of attorney, which includes a true, complete and accurate paper version of all pages of the instrument, including the original signatures or electronic signatures of the testator and all witnesses, and a lengthy signed original paper certification by the supervising attorney.

I should add that Senate Bill 820 was drafted in its original form and thoroughly vetted by the members of the Estates and Trusts Section, to whom I now turn for more detailed information about the bill.

I hope the Committee will issue a favorable report on this bill.

SB820 - Written Testimony - Remote Witnessing and

Uploaded by: Muff, Michaela

Position: FWA

To: Members of Senate Judicial Proceedings Committee

From: MSBA Estate & Trust Law Section

Date: March 5, 2021

Subject: **SB 820** – Estates & Trusts – Wills, Powers of Attorney, and Advance Directives – Electronic Execution

Position: **Favorable with Amendment**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports** Senate Bill 820 – **Estates & Trusts – Wills, Powers of Attorney, and Advance Directives – Electronic Execution** – with amendments. **Senate Bill 820** permits the remote witnessing and electronic execution of wills, powers of attorney and advance directives in a safe, secure and efficient manner, thus eliminating the requirement for these documents to be executed in person. On April 10, 2020, in response to the COVID-19 pandemic, the Governor issued Order No. 20-04-10-01 (the “**Emergency Order**”) permitting the remote witnessing and electronic execution of wills, powers of attorney and advance directives in a responsible manner. SB 820 seeks to refine and codify the methods of execution permitted by the Emergency Order.

Since the issuance of the Emergency Order, Maryland attorneys have regularly used the remote and electronic execution methods permitted thereunder and the experiences of the members of the bar have been overwhelmingly positive. Without the Emergency Order, it would have been impossible to assist clients with the execution of their estate planning documents if they were quarantined or in hospitals, nursing homes or other establishments that did not permit visitors, or unable to risk exposure due to immunocompromising illness. The Emergency Order and the overwhelmingly positive experiences with these execution methods demonstrate the need for a more permanent solution that is now proposed by Senate Bill 820.

In response to the COVID-19 pandemic, Governors throughout the country have issued similar emergency orders. Legislation similar to SB 820 was enacted in Ohio during the pandemic and has been introduced in Virginia, Colorado, North Dakota and Washington. These states are in addition to those states that already enacted similar legislation in Utah, Florida, Idaho, Nevada and Arizona, and we anticipate that additional states will introduce similar legislation this year.

Description of Current Law

The current statutory framework in Maryland does not allow wills, powers of attorney or advance medical directives to be remotely witnessed or signed electronically, with the limited



exception of advanced medical directives electronically executed pursuant to Section 5-602 (c)(3) of the Health General Article.

The execution of wills is governed by Sections 4-102 et seq. of the Estates and Trusts Article; the execution of advance medical directives is governed by Sections 5-601 et seq. of the Health General Article; and the execution of powers of attorney is governed by Sections 17-101 of the Estates and Trusts Article.

While in effect during the COVID-19 pandemic, the Order of the Governor Number 20-04-10-01 authorizes remote witnessing and electronic signing of wills, powers or attorney and advance directives. This Emergency Order also imposed a safeguard by requiring a supervising attorney to create a certified paper copy of these documents to ensure that they were properly executed and that the requirements of the Emergency Order were met. Although this Emergency Order has been critically important to permit the ongoing execution of estate planning documents during the pandemic, it is temporary in nature and a permanent solution is needed.

Problem with the Current Law

Under Maryland statutory law, a will, power of attorney or advance directive is not valid unless it is signed by the testator or principal (or at their direction) and two or more credible witnesses in the physical presence of the testator or principal. The limited exception for electronically signed advance directives was noted above. The ongoing COVID-19 pandemic, the possibility of future health crises, and the need to reach individuals who otherwise might not have access to an attorney have highlighted the importance of being able to execute fundamental estate planning documents outside of the bounds of a physical presence requirement. Such a requirement prohibits people who are unable to meet in-person from executing these essential documents, and often times, these are the very people who are most in need of having these documents in place.

Maryland already has two statutes that allow for the electronic execution of documents which include the Maryland Uniform Electronic Transaction Act (which permits virtual signatures) and the Revised Uniform Law on Notarial Acts (“RULONA”) (which permits remote notarizations). However, both of these statutes currently exclude wills, and RULONA presents limitations on use for powers of attorney. Also, the bar has noted a significant shift in individual expectations, with many individuals expecting to be able to sign estate planning documents online, just like they sign bank documents, promissory notes, contracts and other important documents. There is a need to modernize Maryland law to eliminate the need for in-person meetings and allow online services in a way that is safe, secure and does not otherwise change the fundamental laws relating to the execution of wills, powers of attorney and advance directives. The recent pandemic and the Emergency Order illustrate the pressing need for these updates.

How the Legislation Solves the Problem

SB 820 allows for the execution of wills, powers of attorney and advance directives without the need for in-person meetings by allowing the parties to be in each other’s electronic presence

through the use of communication technology. Other than broadening the presence requirement, the proposed legislation breaks no new legal ground. The document must be readable as text, signed by the testator or principal, and attested and signed by two or more credible witnesses in the physical and/or electronic presence of the testator or principal. The proposed legislation incorporates safeguards similar to those imposed by the Emergency Order. Specifically, to ensure the safety and prevent abuse during the execution process, SB 820 requires a certified paper copy of any remotely witnessed or electronically executed will or power of attorney to be created by a supervising attorney. SB 820 also allows for the creation of a certified paper copy of a will by the testator, in the alternative, so long as the testator's signature on the certification is notarized. This deviation from the Emergency Order allowing for a testator's notarized certification, as an alternative to a supervising attorney's certification, is important and will allow an individual who chooses to prepare a will without assistance of an attorney to sign the will using remote witnessing and/or electronic execution.

Unlike the requirement for wills and powers of attorney, SB 820 does not require any certification for advance directives. In general, we do not see the same abuses with advance directives as we do with wills and powers of attorney, and therefore, by eliminating the certification requirement as relates to advance directives, SB 820 will make it easier, not harder, for people to execute advance directives, which is particularly important in the era of COVID-19.

The proposed law also provides that the certified paper copies will be given equal status as traditional wills and powers of attorney, and the revocation of these documents may occur in the exact same manner as permitted under current law, i.e. by executing a superseding document or destroying the certified paper copy.

Allowing documents to be executed in the manner provided in SB 820 as amended will protect even our most vulnerable population while safeguarding against incidences of fraud and undue influence that might arise solely as a result of the remote witnessing or electronic execution of such documents.

Most of the amendments to SB 820 are technical corrections in nature. The crux of the amendment to SB 820 is made to Sections 17-101 and 17-110 of the Estates and Trusts Article. Section 17-110 as amended includes a carve out to the attorney certification requirement for an electronic power of attorney used in connection with a real estate transaction, which is now defined in Section 17-101(l). The carve out addresses concerns raised by the Real Property Section of the MSBA as well as the Maryland Land Title Association that SB 820 would negatively impact their practices and the use of electronic powers of attorney in connection with real estate transactions. After discussion and consideration, it was agreed that this carve out was the best solution that would resolve their concerns while leaving the rest of SB 820 intact.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 820 with amendments and urges a favorable committee report.**



For Further Information, Please Contact:

<p>Anne W. Coventry (301) 656-8850 acoventry@pasternakfidis.com</p>	<p>Michaela C. Muffoletto (410) 332-8534 mcm@nqgrg.com</p>	<p>Christine W. Hubbard (410) 798-4533 christine@chubbardlaw.com</p>	<p>Leanne Broyles (410) 497-5947 leanne.broyles@frostdtaxlaw.com</p>
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SB 820 Testimony Support with Amendments [3.5.21]

Uploaded by: O'Connell, William

Position: FWA



Real Property Section

To: Members of the Senate Judicial Proceedings Committee

From: William A. O'Connell, Chair, Legislative Committee, Real Property Section

Date: March 5, 2021

Subject: **SB 820** – Wills, Powers of Attorney, and Advance Directives – Electronic Execution

Position: **Support with Amendments**

The Maryland State Bar Association (MSBA) Real Property Section **supports, with amendments attached hereto, Senate Bill 820** Wills, Powers of Attorney, and Advance Directives – Electronic Execution. The bill seeks to allow wills and powers of attorney to be witnessed and executed remotely using communication technology.

The law as it exists today allows for the execution of a power of attorney electronically but requires the two witnesses to be in the physical presence of the principal and each other. Under existing law, when the power of attorney is executed remotely before a notary using communication technology, the notary may not be one of the witnesses. The bill would allow the witnesses, principal, and notary to all be in different locations when the power of attorney is executed. This will be helpful to everyone.

A power of attorney is a useful tool in purchasing and selling of real property and/or obtaining a loan secured by real property. Often, the need for a power of attorney arises unexpectedly and with settlement a short time away. Other times the parties seek to plan for any contingencies and execute a power of attorney for that purpose. In addition, it would be unreasonable to require a consumer to expend the time and expense required to hire an attorney to participate in creating and executing a power of attorney that may be needed in connection with a real estate transaction. One of the goals of enacting the Uniform Power of Attorney Act in 2010 and the statutory forms that went with it was to allow individuals to prepare and execute a power of attorney without involving an attorney.

As such, the attached amendments are needed to allow an electronic power of attorney used in connection with a real estate transaction to be executed without having to involve an attorney. And because of the complexity of executing an electronic power of attorney in other contexts that may one day be used in connection with a real estate transaction, it is necessary to amend Real Property Article §4-109 (commonly known as “the curative statute”) to add to it “(7) A lack of or defective witness attestation to a power of attorney.”

For these reasons, the MSBA Real Property Section **supports with amendments SB 820** and asks for a **favorable report**. Thank you for your consideration. Please do not hesitate to contact me at (443) 741-4536 or waoconnell@firstam.com.

SENATE BILL 820

N2, J1

11r2215
CF HB 1261

By: **Senator West**

Introduced and read first time: February 9, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Wills, Powers of Attorney, and Advance Directives – Electronic Execution**

3 FOR the purpose of altering certain provisions of law related to the execution of wills to
4 authorize a person to electronically execute a will under certain circumstances;
5 requiring a certain testator, witnesses, and supervising attorney to be in certain
6 physical or electronic presence of one another at a certain time under certain
7 circumstances; authorizing a supervising attorney to be a certain witness to the
8 execution of certain instruments under certain circumstances; establishing certain
9 residency, presence, and signature requirements for a certain testator and certain
10 witnesses under certain circumstances; requiring a supervising attorney to create a
11 certain certified will under certain circumstances; requiring a testator to create a
12 certain certified will under certain circumstances; providing that a certain certified
13 will shall be deemed the original will of the testator under certain circumstances;
14 establishing a certain date of execution for a certain certified will; altering certain
15 provisions of law related to the proper execution of a will outside of the State; altering
16 certain provisions of law related to the execution of a power of attorney to authorize
17 a person to electronically execute a power of attorney if certain requirements are
18 satisfied; requiring a certain principal, witnesses, and supervising attorney to be in
19 certain physical or electronic presence of one another at a certain time under certain
20 circumstances; establishing certain residency, presence, and signature requirements
21 for a certain principal and certain witnesses under certain circumstances; requiring
22 a supervising attorney to create a certain certified power of attorney under certain
23 circumstances; providing that a certain certified power of attorney shall be deemed
24 the original power of attorney of a certain principal under certain circumstances;
25 establishing a certain date of execution for a certain certified power of attorney;
26 altering certain provisions of law related to the execution of advance directives to
27 authorize certain witnesses to sign an advance directive in either certain physical or
28 electronic presence of the declarant; providing that a will, a power of attorney, a
29 notarization of a power of attorney, or an advance directive executed in conformance
30 with the provisions of certain executive orders shall be deemed to satisfy certain
31 requirements under this Act; altering certain definitions; defining certain terms;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

1 making certain clarifying changes; providing for the retroactive application of this
2 Act; and generally relating to the execution of wills, powers of attorney, and advance
3 directives.

4 BY repealing and reenacting, with amendments,
5 Article – Estates and Trusts
6 Section 1–101(w), 4–102, 4–104, 17–101, and 17–110
7 Annotated Code of Maryland
8 (2017 Replacement Volume and 2020 Supplement)

9 BY repealing
10 Article – Estates and Trusts
11 Section 4–101
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2020 Supplement)

14 BY adding to
15 Article – Estates and Trusts
16 Section 4–101
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Health – General
21 Section 5–601 and 5–602(c)
22 Annotated Code of Maryland
23 (2019 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article – Health – General
26 Section 5–602(a)
27 Annotated Code of Maryland
28 (2019 Replacement Volume and 2020 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
30 That the Laws of Maryland read as follows:

31 **Article – Estates and Trusts**

32 1–101.

33 (w) [(1)] “Will” [means a written instrument which is executed in the form
34 prescribed by §§ 4–102 through 4–104 of this article, and has not been revoked in a manner
35 provided by § 4–105 of this article.

36 (2) “Will” includes a codicil] **HAS THE MEANING STATED IN § 4–101 OF**
37 **THIS ARTICLE.**

1 [4-101.

2 Any person may make a will if the person is 18 years of age or older, and legally
3 competent to make a will.]

4 **4-101.**

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) "ELECTRONIC" MEANS TECHNOLOGY HAVING ELECTRICAL, DIGITAL,
8 MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

9 (C) "ELECTRONIC PRESENCE" MEANS TWO OR MORE INDIVIDUALS
COMMUNICATING IN REAL TIME USING ELECTRONIC AUDIO-VISUAL MEANS TO THE
SAME EXTENT AS IF THE INDIVIDUALS WERE IN THE PHYSICAL PRESENCE OF EACH
OTHER.

10 (D) "ELECTRONIC SIGNATURE" MEANS AN ELECTRONIC SYMBOL, SOUND,
11 OR PROCESS ATTACHED TO OR LOGICALLY ASSOCIATED WITH A RECORD AND
12 EXECUTED OR ADOPTED BY AN INDIVIDUAL WITH THE INTENT TO SIGN THE RECORD.

13 (E) "ELECTRONIC WILL" MEANS A WILL CONTAINING ONE OR MORE
14 ELECTRONIC SIGNATURES AND EXECUTED IN COMPLIANCE WITH THIS
SUBTITLE.

15 (F) "PHYSICAL PRESENCE" MEANS BEING CLOSE ENOUGH TO SEE, HEAR, AND
SPEAK WITH ANOTHER INDIVIDUAL WITHOUT USING ELECTRONIC AUDIO-VISUAL
MEANS.

16 (G) "RECORD" MEANS INFORMATION READABLE AS TEXT THAT IS
17 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC MEDIUM
18 AND RETRIEVABLE IN PERCEIVABLE FORM.

19 (H) "REMOTELY WITNESSED WILL" MEANS A WILL THAT IS:

20 (1) SIGNED BY THE TESTATOR UNDER CIRCUMSTANCES WHERE A
21 WITNESS IS IN THE ELECTRONIC PRESENCE, BUT NOT THE PHYSICAL PRESENCE, OF
22 THE TESTATOR WHEN THE WITNESS ATTESTS TO AND SIGNS THE WILL; AND

23 (2) EXECUTED, PREPARED, AND CERTIFIED IN COMPLIANCE WITH §
24 4-102 OF THIS SUBTITLE.

- (I) “SIGN” MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, TO:**
(1) EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR
(2) ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL.

1 (J) “SUPERVISING ATTORNEY” MEANS AN INDIVIDUAL WHO HAS BEEN
2 ADMITTED TO PRACTICE LAW BEFORE THE COURTS OF THIS STATE AND IS IN GOOD
3 STANDING.

4 (K) “WILL” MEANS A RECORD THAT THE TESTATOR INTENDS TO ADOPT AS
5 THE TESTATOR’S CODICIL OR TESTAMENTARY INSTRUMENT AND THAT:

8 (1) (I) APPOINTS A PERSONAL REPRESENTATIVE;

9 (II) REVOKES OR REVISES ANOTHER WILL;

10 (III) NOMINATES A GUARDIAN;

11 (IV) DIRECTS THE DISPOSITION OF THE TESTATOR’S PROPERTY;
12 OR

13 (V) EXPRESSLY EXCLUDES OR LIMITS THE RIGHT OF AN
14 INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF A DECEDENT PASSING BY
15 INTESTATE SUCCESSION;

16 (2) IS EXECUTED IN THE FORM PRESCRIBED UNDER §§ 4–102
17 THROUGH 4–104 OF THIS SUBTITLE; AND

18 (3) HAS NOT BEEN REVOKED IN A MANNER PROVIDED BY § 4–105 OF
19 THIS SUBTITLE.

20 4–102.

21 (A) ANY PERSON MAY MAKE A WILL IF THE PERSON IS 18 YEARS OF AGE OR
22 OLDER, AND LEGALLY COMPETENT TO MAKE A WILL.

23 [(a)] (B) Except as provided in §§ 4–103 and 4–104 of this subtitle AND
24 SUBSECTION (F) OF THIS SECTION, every will shall be:

25 (1) In writing;

26 (2) Signed by the testator, or by some other person for the testator, in the
27 testator’s presence and by the testator’s express direction; and

28 (3) Attested and signed by two or more credible witnesses in [the]:

1 **(I) THE PHYSICAL presence of the testator; OR**

2 **(II) THE ELECTRONIC PRESENCE OF THE TESTATOR, PROVIDED**
3 **THAT AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL SATISFIES THE**
4 **REQUIREMENTS UNDER SUBSECTION (C) OR (D) OF THIS SECTION.**

5 **[(b) For purposes of this section, a witness is not in the presence of the testator if**
6 **the witness is in a different physical location than the testator regardless of whether the**
7 **testator can observe the witness through electronic audio–video or other technological**
8 **means.]**

9 **(C) AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL EXECUTED**
10 **UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING REQUIREMENTS:**

11 **(1) AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE**
12 **TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR**
13 **ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING ATTORNEY, WHO**
14 **MAY BE ONE OF THE WITNESSES;**

15 **(2) AT THE TIME THE TESTATOR SIGNS THE WILL, THE TESTATOR**
16 **SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;**

17 **(3) EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE**
18 **TESTATOR WHEN THE WITNESS ATTESTS AND SIGNS THE WILL, OR PROVIDES AN**
19 **ELECTRONIC SIGNATURE ON THE WILL, SHALL BE A RESIDENT OF THE UNITED**
20 **STATES AND BE PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THE**
21 **WITNESS ATTESTS AND SIGNS THE WILL;**

22 **(4) THE TESTATOR AND WITNESSES SHALL SIGN THE SAME WILL OR**
23 **ANY COUNTERPART THEREOF; AND**

24 **(5) THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED WILL**
25 **THAT SHALL INCLUDE:**

26 **(I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF**
27 **ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC**
28 **SIGNATURES OF THE TESTATOR AND ALL WITNESSES; AND**

29 **(II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE**
30 **SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY**
31 **OBSERVED THE TESTATOR AND WITNESSES SIGN THE WILL AND THAT THE**
32 **SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:**

33 **1. THAT THE CERTIFIED WILL INCLUDES A TRUE,**

1 COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF THE WILL;

2 2. THAT THE SIGNATURES CONTAINED IN THE
3 CERTIFIED WILL ARE THE ORIGINAL SIGNATURES OF EACH PARTY SIGNING THE
4 SAME PAPER WILL, OR ANY COUNTERPART THEREOF, AND ELECTRONIC
5 SIGNATURES OF EACH PARTY SIGNING THE SAME ELECTRONIC WILL, OR ANY
6 COUNTERPART THEREOF;

7 3. THAT THE TESTATOR AND EACH OF THE WITNESSES
8 SIGNED THE SAME WILL OR ANY COUNTERPART THEREOF;

9 4. THE IDENTITY OF EACH WITNESS AND THAT EACH
10 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE TESTATOR WHEN THE
11 WITNESS ATTESTED AND SIGNED THE WILL, OR PROVIDED AN ELECTRONIC
12 SIGNATURE ON THE WILL, WAS A RESIDENT OF THE UNITED STATES AND
13 PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME THAT THE WITNESS
14 ATTESTED AND SIGNED THE WILL; AND

15 5. THE IDENTITY OF THE TESTATOR AND THAT THE
16 TESTATOR WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT
17 THE TIME THAT THE TESTATOR SIGNED THE WILL.

18 (D) AN ELECTRONIC WILL OR REMOTELY WITNESSED WILL EXECUTED
19 UNDER THIS SUBSECTION SHALL SATISFY THE FOLLOWING REQUIREMENTS:

20 (1) AT THE TIME THE TESTATOR AND WITNESSES SIGN THE WILL, THE
21 TESTATOR AND ALL WITNESSES SHALL BE IN THE PHYSICAL PRESENCE OR
22 ELECTRONIC PRESENCE OF ONE ANOTHER;

23 (2) THE REQUIREMENTS UNDER SUBSECTION (C)(2) THROUGH (4) OF
24 THIS SECTION SHALL BE SATISFIED; AND

25 (3) THE TESTATOR SHALL CREATE A CERTIFIED WILL THAT SHALL
26 INCLUDE:

27 (I) A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF
28 ALL PAGES OF THE WILL INCLUDING THE ORIGINAL SIGNATURES OR ELECTRONIC
29 SIGNATURES OF THE TESTATOR AND ALL WITNESSES; AND

30 (II) AN ORIGINAL PAPER CERTIFICATION SIGNED AND
31 ACKNOWLEDGED BY THE TESTATOR IN THE PHYSICAL OR ELECTRONIC
PRESENCE OF A NOTARY PUBLIC, WHO MAY NOT BE ONE OF THE WITNESSES,
STATING:

1 1. **THE DATE THAT THE TESTATOR AND WITNESSES**
2 **SIGNED THE WILL; AND**

3 2. **THAT THE TESTATOR TOOK REASONABLE STEPS TO**
4 **VERIFY THE SAME FACTS AND INFORMATION REQUIRED UNDER SUBSECTION**
5 **(C)(5)(II) OF THIS SECTION.**

6 (E) (1) **ONCE THE SUPERVISING ATTORNEY OR TESTATOR CREATES A**
7 **CERTIFIED WILL AS PROVIDED IN SUBSECTION (C) OR (D) OF THIS SECTION, THE**
8 **CERTIFIED WILL SHALL BE DEEMED TO BE THE ORIGINAL WILL OF THE TESTATOR**
9 **FOR ALL PURPOSES UNDER THIS ARTICLE.**

10 (2) **THE DATE OF EXECUTION FOR A CERTIFIED WILL DESCRIBED**
11 **UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF EXECUTION**
12 **STATED IN THE CERTIFIED WILL.**

13 (F) **A WILL EXECUTED IN CONFORMANCE WITH THE PROVISIONS OF**
14 **EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE WITNESSING AND**
15 **ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN**
16 **SIGNED AND WITNESSED IN CONFORMITY WITH THIS SECTION IF THE WILL WAS**
17 **SIGNED AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN**
18 **EFFECT.**

19 4–104.

20 [A will executed outside this State] **IF A TESTATOR IS PHYSICALLY OUTSIDE THE**
21 **STATE AT THE TIME THE TESTATOR EXECUTES THE WILL, THE WILL is properly**
22 **executed if it is:**

23 (1) In writing;

24 (2) Signed by the testator **OR BY SOME OTHER PERSON ON THE**
25 **TESTATOR’S BEHALF, IN THE TESTATOR’S PHYSICAL PRESENCE, AND BY THE**
26 **TESTATOR’S EXPRESS DIRECTION; and**

27 (3) Executed in conformity with:

28 (i) The provisions of § 4–102 of this subtitle;

29 (ii) The law of the domicile of the testator; or

30 (iii) The law of the place where the testator is physically located at
31 the time the testator signs the will.

32 17–101.

1 (a) In this title the following words have the meanings indicated.

2 (b) (1) “Agent” means a person granted authority to act for a principal under
3 a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

4 (2) “Agent” includes an original agent, coagent, successor agent, and a
5 person to which an agent’s authority is delegated.

6 (C) **“ELECTRONIC” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

7 (D) **“ELECTRONIC POWER OF ATTORNEY” MEANS A POWER OF ATTORNEY**
8 **CONTAINING ONE OR MORE ELECTRONIC SIGNATURES AND EXECUTED IN**
9 **COMPLIANCE WITH THIS TITLE.**

9 (E) **“ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4–101 OF**
10 **THIS ARTICLE.**

11 (F) **“ELECTRONIC SIGNATURE” HAS THE MEANING STATED IN § 4–101 OF**
12 **THIS ARTICLE.**

13 [(c)] (G) “Incapacity” means the inability of an individual to manage property or
14 business affairs because the individual:

15 (1) Meets the grounds required for the appointment of a guardian of the
16 property of a disabled person described in § 13–201 of this article; or

18 (2) Is:

19 (i) Missing;

20 (ii) Detained, including incarcerated in a penal system; or

21 (iii) Outside the United States and unable to return.

22 (H) **“PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4–101 OF THIS**
23 **ARTICLE.**

24 [(d)] (I) “Power of attorney” means a writing or other record that grants
25 authority to an agent to act in the place of the principal, whether or not the term “power of
26 attorney” is used.

27 [(e)] (J) “Principal” means an individual who grants authority to an agent in a
28 power of attorney.

29 [(f)] (K) “Property” includes both real and personal property and any right or

1 title in real or personal property, whether held individually or jointly and whether
2 indivisible, beneficial, contingent, or of any other nature.

3 **(L) “REAL ESTATE TRANSACTION” MEANS ANY ACTIVITY INVOLVING THE**
TRANSFER OR CREATION OF AN ESTATE, INTEREST, LIEN OR ENCUMBRANCE IN REAL
PROPERTY, INCLUDING RIGHTS OR INTERESTS APPURTENANT THERETO AND THE
DISPOSITION OF PROCEEDS DERIVED THEREFROM.

4

5

6 **(M) “RECORD” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

7 **(N) “REMOTELY WITNESSED POWER OF ATTORNEY” MEANS A POWER OF**
ATTORNEY SIGNED BY THE PRINCIPAL UNDER CIRCUMSTANCES WHERE ANY
WITNESS IS IN THE ELECTRONIC PRESENCE OF THE PRINCIPAL OR OTHER WITNESS
WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY.

10 **(O) “SIGN” HAS THE MEANING STATED IN § 4–101 OF THIS ARTICLE.**

11 **[(g)] (P)** (1) “Statutory form power of attorney” means a power of attorney
12 that is substantially in the same form as one of the powers of attorney set forth in Subtitle
13 2 of this title.

14 (2) “Statutory form power of attorney” does not include a power of attorney
15 set forth in Subtitle 2 of this title in which a principal incorporates by reference one or more
16 provisions of another writing into the section of the power of attorney entitled “Special
17 Instructions (Optional)”.

18 **[(h)] (Q)** (1) “Stocks and bonds” means evidence of ownership in or debt
19 issued by a corporation, partnership, limited liability company, firm, association, or similar
20 entity.

21 (2) “Stocks and bonds” includes stocks, bonds, debentures, notes,
22 membership interests, mutual fund interests, money market account interests, voting trust
23 certificates, equipment trust certificates, certificates of deposit, certificates of participation,
24 certificates of beneficial interest, stock rights, stock warrants, and any other instruments
25 evidencing rights of a similar character issued by or in connection with any corporation,
26 partnership, limited liability company, firm, association, or similar entity.

27 **(S) “SUPERVISING ATTORNEY” HAS THE MEANING STATED IN § 4–101 OF**
28 **THIS ARTICLE.**

29 17–110.

30 (a) **[A] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION,** A power
31 of attorney executed on or after October 1, 2010, shall be:

32 (1) In writing;

33 (2) Signed by the principal or by some other person for the principal, in the

34 presence of the principal, and at the express direction of the principal;

1 (3) Acknowledged by the principal **IN THE PHYSICAL OR ELECTRONIC PRESENCE OF** a notary public; and

2 (4) Attested and signed by two or more adult witnesses who sign in [the]:

3 (I) **THE PHYSICAL** presence of the principal and [in the presence
4 of] each other; **OR**

5 (II) **THE ELECTRONIC PRESENCE OF THE PRINCIPAL AND EACH**
6 **OTHER OR ANY COMBINATION OF PHYSICAL OR ELECTRONIC PRESENCE.**

7 (b) The notary public before whom the principal acknowledges the power of attorney may also serve as one of the two or more adult witnesses **AND MAY USE** communication technology under § 18–214 of the State Government Article **FOR THAT PURPOSE.**

8 **(C) EXCEPT FOR AN ELECTRONIC POWER OF ATTORNEY USED IN CONNCTION WITH A REAL ESTATE TRANSACTION, AN ELECTRONIC POWER OF ATTORNEY OR A REMOTELY WITNESSED POWER OF ATTORNEY EXECUTED UNDER THIS SUBSECTION SHALL SATISFY THE ADDITIONAL FOLLOWING REQUIREMENTS:**

9 (1) **AT THE TIME THE PRINCIPAL AND WITNESSES SIGN THE POWER**
10 **OF ATTORNEY, THE PRINCIPAL AND ALL WITNESSES SHALL BE IN THE PHYSICAL**
11 **PRESENCE OR ELECTRONIC PRESENCE OF ONE ANOTHER AND A SUPERVISING**
12 **ATTORNEY, WHO MAY BE ONE OF THE WITNESSES;**

13 (2) **AT THE TIME THE PRINCIPAL SIGNS THE POWER OF ATTORNEY,**
14 **THE PRINCIPAL SHALL BE A RESIDENT OF, OR PHYSICALLY LOCATED IN, THE STATE;**

15 (3) **EACH WITNESS WHO IS IN THE ELECTRONIC PRESENCE OF THE**
16 **PRINCIPAL WHEN THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY, OR**
17 **PROVIDES AN ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, SHALL BE A**
18 **RESIDENT OF THE UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED**
19 **STATES AT THE TIME THE WITNESS ATTESTS AND SIGNS THE POWER OF ATTORNEY;**

20 (4) **THE PRINCIPAL AND WITNESSES SHALL SIGN THE SAME POWER**
21 **OF ATTORNEY OR ANY COUNTERPART THEREOF; AND**

22 (5) **THE SUPERVISING ATTORNEY SHALL CREATE A CERTIFIED**
23 **POWER OF ATTORNEY THAT SHALL INCLUDE:**

24 (I) **A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF**
25 **ALL PAGES OF THE POWER OF ATTORNEY, INCLUDING THE ORIGINAL SIGNATURES**

1 AND ELECTRONIC SIGNATURES OF THE PRINCIPAL AND ALL WITNESSES; AND

2 (II) A SIGNED ORIGINAL PAPER CERTIFICATION BY THE
3 SUPERVISING ATTORNEY STATING THE DATE THAT THE SUPERVISING ATTORNEY
4 OBSERVED THE PRINCIPAL AND WITNESSES SIGN THE POWER OF ATTORNEY AND
5 THAT THE SUPERVISING ATTORNEY TOOK REASONABLE STEPS TO VERIFY:

6 1. THAT THE CERTIFIED POWER OF ATTORNEY
7 INCLUDES A TRUE, COMPLETE, AND ACCURATE PAPER VERSION OF ALL PAGES OF
8 THE POWER OF ATTORNEY;

9 2. THAT THE SIGNATURES CONTAINED IN THE
10 CERTIFIED POWER OF ATTORNEY ARE THE ORIGINAL SIGNATURES OF EACH PARTY
11 SIGNING THE SAME PAPER POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF,
12 AND THE ELECTRONIC SIGNATURES OF EACH PARTY SIGNING THE SAME
13 ELECTRONIC POWER OF ATTORNEY, OR ANY COUNTERPART THEREOF;

14 3. THAT THE PRINCIPAL AND EACH OF THE WITNESSES
15 SIGNED THE SAME POWER OF ATTORNEY OR ANY COUNTERPARTS THEREOF;

16 4. THE IDENTITY OF THE PRINCIPAL, AND THAT THE
17 PRINCIPAL WAS A RESIDENT OF, OR WAS PHYSICALLY LOCATED IN, THE STATE AT
18 THE TIME THE PRINCIPAL SIGNED THE POWER OF ATTORNEY; AND

19 5. THE IDENTITY OF EACH WITNESS, AND THAT EACH
20 WITNESS WHO WAS NOT IN THE PHYSICAL PRESENCE OF THE PRINCIPAL WHEN THE
21 WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY, OR PROVIDED AN
22 ELECTRONIC SIGNATURE ON THE POWER OF ATTORNEY, WAS A RESIDENT OF THE
23 UNITED STATES AND PHYSICALLY LOCATED IN THE UNITED STATES AT THE TIME
24 THE WITNESS ATTESTED AND SIGNED THE POWER OF ATTORNEY.

25 (D) (1) ONCE THE SUPERVISING ATTORNEY CREATES A CERTIFIED
26 POWER OF ATTORNEY IF REQUIRED IN SUBSECTION (C) OF THIS SECTION,
THE CERTIFIED POWER OF ATTORNEY SHALL BE DEEMED TO BE THE ORIGINAL
POWER OF ATTORNEY OF THE PRINCIPAL FOR ALL PURPOSES UNDER THIS ARTICLE.

27 (2) THE DATE OF EXECUTION FOR THE POWER OF ATTORNEY
28 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE THE DATE OF
29 EXECUTION AS STATED IN THE CERTIFIED POWER OF ATTORNEY.

30 (E) (1) A POWER OF ATTORNEY EXECUTED IN CONFORMANCE WITH THE
31 PROVISIONS OF EXECUTIVE ORDER 20.04.10.01, AUTHORIZING REMOTE
32 WITNESSING AND ELECTRONIC SIGNING OF CERTAIN DOCUMENTS, SHALL BE

1 DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN CONFORMITY WITH THIS
2 SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND WITNESSED DURING THE
3 TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.

4 (2) THE NOTARIZATION OF A POWER OF ATTORNEY IN CONFORMANCE
5 WITH THE PROVISIONS OF EXECUTIVE ORDER 20.03.30.04, AUTHORIZING REMOTE
6 NOTARIZATIONS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED IN
7 CONFORMITY WITH THIS SECTION IF THE POWER OF ATTORNEY WAS SIGNED AND
8 WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT AND
9 THE NOTARY PUBLIC ACTING UNDER THE ORDER MAY HAVE SERVED AS ONE OF THE
10 WITNESSES.

11 **Article – Health – General**

12 5–601.

13 (a) In this subtitle the following words have the meanings indicated.

14 (b) “Advance directive” means:

15 (1) A witnessed written or electronic document, voluntarily executed by the
16 declarant in accordance with the requirements of this subtitle;

17 (2) A witnessed oral statement, made by the declarant in accordance with
18 the provisions of this subtitle; or

19 (3) An electronic document, voluntarily executed by the declarant, in which
20 the declarant’s identity is authenticated in accordance with the guidelines described in §
21 5–602(c)(3) of this subtitle.

22 (c) “Agent” means an adult appointed by the declarant under an advance
23 directive made in accordance with the provisions of this subtitle to make health care
24 decisions for the declarant.

25 (d) “Attending physician” means the physician who has primary responsibility for
26 the treatment and care of the patient.

27 (e) “Best interest” means that the benefits to the individual resulting from a
28 treatment outweigh the burdens to the individual resulting from that treatment, taking
29 into account:

30 (1) The effect of the treatment on the physical, emotional, and cognitive
31 functions of the individual;

32 (2) The degree of physical pain or discomfort caused to the individual by
33 the treatment, or the withholding or withdrawal of the treatment;

1 (3) The degree to which the individual’s medical condition, the treatment,
2 or the withholding or withdrawal of treatment result in a severe and continuing
3 impairment of the dignity of the individual by subjecting the individual to a condition of
4 extreme humiliation and dependency;

5 (4) The effect of the treatment on the life expectancy of the individual;

6 (5) The prognosis of the individual for recovery, with and without the
7 treatment;

8 (6) The risks, side effects, and benefits of the treatment or the withholding
9 or withdrawal of the treatment; and

10 (7) The religious beliefs and basic values of the individual receiving
11 treatment, to the extent these may assist the decision maker in determining best interest.

12 (f) “Competent individual” means a person who is at least 18 years of age or who
13 under § 20–102(a) of this article has the same capacity as an adult to consent to medical
14 treatment and who has not been determined to be incapable of making an informed
15 decision.

16 (g) “Declarant” means a competent individual who makes an advance directive
17 while capable of making and communicating an informed decision.

18 **(H) “ELECTRONIC” HAS THE MEANING STATED IN § 4–101 OF THE ESTATES**
19 **AND TRUSTS ARTICLE.**

20 **(I) “ELECTRONIC PRESENCE” HAS THE MEANING STATED IN § 4–101 OF**
21 **THE ESTATES AND TRUSTS ARTICLE.**

22 **[(h)] (J) “Electronic signature” has the meaning stated in [§ 21–101 of the**
23 **Commercial Law Article] § 4–101 OF THE ESTATES AND TRUSTS ARTICLE.**

24 **[(i)] (K) “Emergency medical services ‘do not resuscitate order’” means a**
25 **physician’s, physician assistant’s, or nurse practitioner’s written order in a form**
26 **established by protocol issued by the Maryland Institute for Emergency Medical Services**
27 **in conjunction with the State Board of Physicians which, in the event of a cardiac or**
28 **respiratory arrest of a particular patient, authorizes certified or licensed emergency**
29 **medical services personnel to withhold or withdraw cardiopulmonary resuscitation**
30 **including cardiac compression, endotracheal intubation, other advanced airway**
31 **management techniques, artificial ventilation, defibrillation, and other related**
32 **life–sustaining procedures.**

33 **[(j)] (L) “End–stage condition” means an advanced, progressive, irreversible**
34 **condition caused by injury, disease, or illness:**

1 (1) That has caused severe and permanent deterioration indicated by
2 incompetency and complete physical dependency; and

3 (2) For which, to a reasonable degree of medical certainty, treatment of the
4 irreversible condition would be medically ineffective.

5 **[(k)] (M)** “Health care practitioner” means:

6 (1) An individual licensed or certified under the Health Occupations Article
7 or § 13–516 of the Education Article to provide health care; or

8 (2) The administrator of a hospital or a person designated by the
9 administrator in accordance with hospital policy.

10 **[(l)] (N)** (1) “Health care provider” means a health care practitioner or a
11 facility that provides health care to individuals.

12 (2) “Health care provider” includes agents or employees of a health care
13 practitioner or a facility that provides health care to individuals.

14 **[(m)] (O)** (1) “Incapable of making an informed decision” means the inability
15 of an adult patient to make an informed decision about the provision, withholding, or
16 withdrawal of a specific medical treatment or course of treatment because the patient is
17 unable to understand the nature, extent, or probable consequences of the proposed
18 treatment or course of treatment, is unable to make a rational evaluation of the burdens,
19 risks, and benefits of the treatment or course of treatment, or is unable to communicate a
20 decision.

21 (2) For the purposes of this subtitle, a competent individual who is able to
22 communicate by means other than speech may not be considered incapable of making an
23 informed decision.

24 **[(n)] (P)** (1) “Life–sustaining procedure” means any medical procedure,
25 treatment, or intervention that:

26 (i) Utilizes mechanical or other artificial means to sustain, restore,
27 or supplant a spontaneous vital function; and

28 (ii) Is of such a nature as to afford a patient no reasonable
29 expectation of recovery from a terminal condition, persistent vegetative state, or end–stage
30 condition.

31 (2) “Life–sustaining procedure” includes artificially administered
32 hydration and nutrition, and cardiopulmonary resuscitation.

33 **[(o)] (Q)** “Medically ineffective treatment” means that, to a reasonable degree of

1 medical certainty, a medical procedure will not:

2 (1) Prevent or reduce the deterioration of the health of an individual; or

3 (2) Prevent the impending death of an individual.

4 **[(p)] (R)** “Nurse practitioner” means an individual licensed to practice registered
5 nursing in the State and who is certified as a nurse practitioner by the State Board of
6 Nursing under Title 8 of the Health Occupations Article.

7 **[(q)] (S)** “Persistent vegetative state” means a condition caused by injury,
8 disease, or illness:

9 (1) In which a patient has suffered a loss of consciousness, exhibiting no
10 behavioral evidence of self-awareness or awareness of surroundings in a learned manner
11 other than reflex activity of muscles and nerves for low level conditioned response; and

12 (2) From which, after the passage of a medically appropriate period of time,
13 it can be determined, to a reasonable degree of medical certainty, that there can be no
14 recovery.

15 **(T) “PHYSICAL PRESENCE” HAS THE MEANING STATED IN § 4-101 OF THE**
16 **ESTATES AND TRUSTS ARTICLE.**

17 **[(r)] (U)** “Physician” means a person licensed to practice medicine in the State
18 or in the jurisdiction where the treatment is to be rendered or withheld.

19 **[(s)] (V)** “Physician assistant” means an individual who is licensed under Title
20 15 of the Health Occupations Article to practice medicine with physician supervision.

21 **[(t)] (W)** “Signed” means bearing a manual or electronic signature.

22 **[(u)] (X)** “Terminal condition” means an incurable condition caused by injury,
23 disease, or illness which, to a reasonable degree of medical certainty, makes death
24 imminent and from which, despite the application of life-sustaining procedures, there can
25 be no recovery.

26 5-602.

27 (a) (1) Any competent individual may, at any time, make a written or
28 electronic advance directive regarding the provision of health care to that individual, or the
29 withholding or withdrawal of health care from that individual.

30 (2) Notwithstanding any other provision of law, in the absence of a validly
31 executed or witnessed advance directive, any authentic expression made by an individual
32 while competent of the individual’s wishes regarding health care for the individual shall be

1 considered.

2 (c) (1) **(I)** Except as provided in **SUBPARAGRAPH (II) OF THIS**
3 **PARAGRAPH OR** paragraph (3) of this subsection, a written or electronic advance directive
4 shall be dated, signed by or at the express direction of the declarant, and subscribed by two
5 witnesses **IN THE PHYSICAL PRESENCE OR ELECTRONIC PRESENCE OF THE**
6 **DECLARANT.**

7 **(II) A WRITTEN OR ELECTRONIC ADVANCE DIRECTIVE SIGNED**
8 **AND WITNESSED IN CONFORMANCE WITH THE PROVISIONS OF EXECUTIVE ORDER**
9 **20.04.10.01, AUTHORIZING REMOTE WITNESSING AND ELECTRONIC SIGNING OF**
10 **CERTAIN DOCUMENTS, SHALL BE DEEMED TO HAVE BEEN SIGNED AND WITNESSED**
11 **IN CONFORMITY WITH THIS SUBSECTION IF THE ADVANCE DIRECTIVE WAS SIGNED**
12 **AND WITNESSED DURING THE TIME THAT THE EXECUTIVE ORDER WAS IN EFFECT.**

13 (2) (i) Except as provided in subparagraphs (ii) and (iii) of this
14 paragraph, any competent individual may serve as a witness to an advance directive,
15 including an employee of a health care facility, nurse practitioner, physician assistant, or
16 physician caring for the declarant if acting in good faith.

17 (ii) The health care agent of the declarant may not serve as a
18 witness.

19 (iii) At least one of the witnesses must be an individual who is not
20 knowingly entitled to any portion of the estate of the declarant or knowingly entitled to any
21 financial benefit by reason of the death of the declarant.

22 (3) A witness is not required for an electronic advance directive if the
23 declarant's identity has been authenticated in accordance with the National Institute of
24 Standards and Technology Special Publication 800-63-2: Electronic Authentication
25 Guideline or, if replaced, the replacement guideline.

26 (4) The State-designated health information exchange may accept as valid
27 an unwitnessed electronic advance directive in the form of a video record or file to state the
28 declarant's wishes regarding health care for the declarant or to appoint an agent if the
29 video record or file:

30 (i) Is dated; and

31 (ii) Is stored in an electronic file by an electronic advance directives
32 service recognized by the Maryland Health Care Commission.

33 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall be construed to
34 apply retroactively and shall be applied to and interpreted to affect any will, power of
35 attorney, or advance directive executed on or after March 10, 2020.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2021.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Maryland Code Real Property Article §4-109

(a) Defective grants recorded before January 1, 1973. -- If an instrument was recorded before January 1, 1973, any failure of the instrument to comply with the formal requisites listed in this section has no effect, unless the defect was challenged in a judicial proceeding commenced by July 1, 1973.

(b) Defective grants recorded on or after January 1, 1973. -- If an instrument is recorded on or after January 1, 1973, whether or not the instrument is executed on or after that date, any failure to comply with the formal requisites listed in this section has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded.

(c) Failures in formal requisites of an instrument. -- For the purposes of this section, the failures in the formal requisites of an instrument are:

- (1) A defective acknowledgment;
- (2) A failure to attach any clerk's certificate;
- (3) An omission of a notary seal or other seal;
- (4) A lack of or improper acknowledgment or affidavit of consideration, agency, or disbursement;
- (5) An omission of an attestation; ~~or~~
- (6) A failure to name any trustee in a deed of trust; **OR**

(7) A LACK OF OR DEFECTIVE WITNESS ATTESTATION TO A POWER OF ATTORNEY.

MLTA SB 820 written testimony [opposed].pdf

Uploaded by: Jones, Lisa

Position: UNF



1783 Forest Drive, Suite 305, Annapolis, MD 21401 | (443) 620-4408 ph. | (443) 458-9437 fax

To: Members of the Senate Judicial Proceedings Committee
From: MLTA Legislative Committee
Date: March 4, 2021
Subject: **SB 820** – Wills, Powers of Attorney, and Advance Directives – Electronic Execution
Position: **Opposed**

The Maryland Land Title Association (MLTA) opposes SENATE BILL 820 unless the bill is amended so that the Power of Attorney provisions in it do not apply to real estate transactions.

Under current Maryland law, Estates and Trusts Article §17-110, a Power of Attorney must be signed by a principal, acknowledged by a notary public, and attested and signed by two adult witnesses. SB 820 would require that if a Power of Attorney is executed electronically, it must be done in the physical or electronic presence of a supervising attorney, who may be one of the witnesses. This requirement may prove difficult and expensive to accomplish. It will increase the closing costs in residential mortgage transactions.

The Revised Uniform Law on Notarial Acts (RULONA), (Senate Bill 678/Chapter 407 of the Laws of Maryland of 2019 as amended by Senate Bill 636/Chapter 571 of the Laws of Maryland of 2020, effective October 1, 2020) amended State Government Article, Title 18, Subtitle 2 to authorize remote notarizations. There is no requirement in RULONA for the presence of a supervising attorney, for a Power of Attorney or otherwise. For example, deeds may be executed and recorded in Maryland, remotely or in person, without a supervising attorney.

If SB 820 is amended to exclude real estate transactions from its provisions relating to powers of attorney, the Maryland Land Title Association will not object to this bill. Without this amendment, the MLTA urges an UNFAVORABLE REPORT on Senate Bill 820.

www.mdlta.org

SB0820 - Notary - Electronic Execution - FWA - Tim

Uploaded by: RASMUSSEN, DENNIS

Position: UNF



Testimony offered on behalf of:
MARYLAND MORTGAGE BANKERS & BROKERS ASSOCIATION, INC.

IN OPPOSITION TO:
**SB0820 – Wills, Powers of Attorney, and Advance Directives –
Electronic Execution**

Senate Judicial Proceedings Committee
Hearing – 3/9/2021 at 1:00 PM

The Maryland Mortgage Bankers and Brokers Association, Inc. (“MMBBA”) **OPPOSES SENATE BILL 820**, unless the bill is amended so that the Power of Attorney provisions in it, do not apply to real estate transactions.

Under current Maryland law, Estates and Trusts Article §17-110, a Power of Attorney must be signed by a principal, acknowledged by a notary public, and attested and signed by two adult witnesses. SB0820 would require that if a Power of Attorney is executed electronically, it must be done in the physical or electronic presence of a supervising attorney, who may be one of the witnesses. This requirement may prove difficult and expensive to accomplish. It will increase the closing costs in residential mortgage transactions.

The Revised Uniform Law on Notarial Acts (RULONA), (Senate Bill 678/Chapter 407 of the Laws of Maryland of 2019), as amended by Senate Bill 636/Chapter 571 of the Laws of Maryland of 2020), effective October 1, 2020) amended State Government Article, Title 18, Subtitle 2 to authorize remote notarizations. There is no requirement in RULONA for the presence of a supervising attorney, for a Power of Attorney or otherwise. For example, Deeds may be executed and recorded in Maryland, remotely or in person, without a supervising attorney.

If SB0820 is amended to *exclude real estate transactions* from its provisions relating to powers of attorney, the Maryland Mortgage Bankers and Brokers Association, Inc. will not object to this bill. Without this amendment, the MMBBA urges an **UNFAVORABLE REPORT on Senate Bill 820**.

Respectfully submitted,

Timothy J. Gough, Co-Chair
MMBBA Legislative Committee
tgough@baycapitalmortgage.com
(410) 320-0852

Maryland Catholic Conference_OPP_SB820.pdf

Uploaded by: Sheahan, Molly

Position: UNF



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

March 9, 2021

Senate Bill 820

**Wills, Powers of Attorney, and Advance Directives – Electronic Execution
Senate Judicial Proceedings Committee**

Position: Oppose

The Maryland Catholic Conference represents the public policy interests of the three Roman Catholic (arch)dioceses serving Maryland: the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington, which together encompass over one million Marylanders.

Senate Bill 820 would allow testators, witnesses, notaries and attorneys to be in the electronic presence of the others when signing wills and advance directives.

While the Conference appreciates the need for accommodations, electronic presence is not equivalent to physical presence. Electronic signatures and witnessing leaves the door open for widespread fraud, coercion, and abuse on these serious legal matters. Virtual meetings are limited, confined to the small frame of a screen. There is no way to verify who is in the room, witness the physical writing of one's signature, confirm the validity of identification, affirm an individual's capacity and freedom of decision making, or even prevent impersonation. Physical presence also adds a layer of protection against force or coercion exercised against an individual by ensuring the attorney, notary, and witnesses can assess the individual's emotional and mental state and influences.

The Maryland General Assembly has taken many steps to protect the elderly and vulnerable from abuse and exploitation. The Conference supports legislation that aims to protect our most vulnerable populations and believes that every individual, no matter how young or old, deserves to be treated with dignity and respect.

It is for these reasons that the Maryland Catholic Conference asks for an unfavorable report for **SB 820**. Thank you for your consideration.